turity, and until then the amount is certain, it being only after default that any uncertainty arises. *Cherry* v. *Sprague,* 187 Mass. 113, 72 N. E. 456, 105 Am. St. Rep. 381, 67 L. R. A. 33; *Dorsey* v. *Wolfe,* 142 Ill. 589, 32 N. E. 495, 34 Am. St. Rep. 99; *Garr* v. *Louisville Baking Co.,* 11 Bush. (Ky.) 180, 21 Am. Rep. 209.

Such a stipulation has been held void as a penalty and therefore unenforceable as contrary to public policy. It tends to oppress the debtor and offers a ready cover for usury. *Merchants Nat'l Bank* v. *Sevier,* 14 Fed. 662; *Tinsley* v. *Hoskins,* 111 N. C. 340, 16 S. E. 325, 32 Am. St. Rep. 801. The better view is, however, that such a stipulation is valid and binding. *Salsbury* v. *Stewart,* 15 Utah 308, 49 Pac. 777, 62 Am. St. Rep. 934; *Smith* v. *Silvers,* 32 Ind. 321. Its enforcement would tend to lessen the rate of interest because it shows confidence on the part of the borrower that he will be able to pay at maturity without delay. See *Hollin* v. *Drexel,* 7 Watts (Pa.) 126. Again it is eminently just and equitable that the party in default should pay the expenses of a suit for collection. See *Smith* v. *Silver, supra; Nat'l Bank* v. *Danforth,* 80 Ga. 55, 7 S. E. 546.

The same conflict is found on the question of whether the contract is usurious. A few cases hold that it is. *Dow* v. *Updike,* 11 Neb. 95, 7 N. W. 857; *Wright* v. *Traver,* 73 Mich. 493, 41 N. W. 517, 3 L. R. A. 50. But the great weight of authority is contrary, for the additional stipulation is in the nature of indemnity against loss and not strictly an increase of interest. *Fowler* v. *Equitable Trust Co.,* 141 U. S. 411; *Campbell* v. *Shields,* 6 Leigh (Va.) 517; *Stewart* v. *Tenison Bros. Saddlery Co.,* 21 Tex. Civ. App. 530, 53 S. W. 83.

CARRIERS—CARRIAGE OF SHOWS—DELAY IN TRANSPORTATION—DAMAGES.—The defendant, having notice of the use to which the goods were to be put and the purpose of the shipment, negligently delayed to transport the shows of the plaintiff, so that the latter was deprived of their use for a day. *Held,* only nominal damages are recoverable. *Central of Georga Ry. Co.* v. *Weaver* (Ala.), 69 So. 521.

In order to recover for the breach of a contract such damages as are occasioned by the special circumstances surrounding the contract, the party sought to be held liable must know of the circumstances which may give rise to the claim for such damages, and the damages must be the natural consequence of the breach in view of the circumstances. *Hadley* v. *Baxendale,* 9 Exch. 341; *Traywick* v. *Southern Ry. Co.,* 71 S. C. 82, 50 S. E. 549, 110 Am. St. Rep. 563; *Harper Furniture Co.* v. *Southern Express Co.,* 148 N. C. 87, 62 S. E. 145, 31 L. R. A. (N. S.) 483.

The theory on which the law gives such damages after notice is that such was the intention of the parties. *Globe Refining Co.* v. *Landa Cotton Oil Co.,* 190 U. S. 540; *Lonergan* v. *Waldo,* 179 Mass. 135, 60 N. E. 479. By the better authority, then, the party sought to be held liable must have notice or knowledge of the circumstances at the time the contract is made. *Jordan* v. *Patterson,* 67 Conn. 473, 35 Atl. 521; *Bradley* v. *Chicago, M. & S. P. Ry.,* 94 Wis. 44, 68 N. W. 410. Such notice must form the basis of the contract, though it need not be a part of

the contract, itself. *Winslow, E. & M. Co.* v. *Hoffman,* 107 Md. 621, 69 Atl. 394; *Southern Ry. Co.* v. *Myers,* 32 C. C. A. 19, 87 Fed. 149; *American Bridge Co.* v. *Am. Dist. Steam Co.,* 107 Minn. 140, 119 N. W. 783. By the weight of authority, the notice will be presumed to have formed the bases of the contract, even where the promisor is a common carrier, and cannot refuse to accept the goods; and an agreement to pay special damages implied if the contract is made with knowledge of the peculiar circumstances. *Simpson* v. *Londan & N. W. Ry. Co.,* 1 Q. B. Div. 274; *Neal* v. *Pender-Hymen Hardware Co.,* 122 N. C. 104, 29 S. E. 96, 65 Am. St. Rep. 697; *Ill. Cent. Ry. Co.* v. *Calmet Co.,* 104 Tenn. 568, 58 S. W. 303, 78 Am. St. Rep. 933, 50 L. R. A. 729. But as regards common carriers, it seems more reasonable to regard such liability as an additional burden they have to bear incident to exercising a monopoly. See 16 LAW QUAR. REV. 283. Knowledge of the nature of the goods, being equivalent to notice of any peculiar circumstances, is sufficient to make one liable for damages resulting from their peculiar character—the other conditions being present. *Simpson* v. *London & N. W. Ry. Co., supra; Altschuler* v. *Atchison, etc., Ry. Co.* (Wis.), 144 N. W. 294, 49 L. R. A. (N. S.) 491.

But even where one has notice of the surrounding circumstances sufficient to make him liable for damages resulting on account of their peculiar nature, he will not be liable unless the amount of such damage can be fixed with reasonable certainty. *Griffin* v. *Colver,* 16 N. Y. 489; *Alkabest Lyceum System* v. *Curry* (Ga.), 65 S. E. 580. By the great weight of authority, one whose show is negligently delayed so that he is deprived of the use of it, can recover what he would have made but for the delay. *Weston* v. *Boston & Maine Ry. Co.,* 190 Mass. 298, 76 N. E. 1050, 4 L. R. A. (N. S.) 569, 112 Am. St. Rep. 330, 5 Ann. Cas. 825; *Altschuler* v. *Atchison, etc., Ry. Co., supra.* See *Yoakum* v. *Dunn,* 1 Tex. Civ. App. 524, 21 S. W. 411. This seems sound, since the very nature of the goods, without which the performance cannot be conducted, give sufficient notice; and the damages, in such cases, can almost always be ascertained with the requisite certainty.

CONFLICT OF LAWS—JURISDICTION—INJURIES TO REALTY.—The plaintiff brought an action in an Oregon court to recover damages for injuries to real property situated in Washington. *Held,* the court has no jurisdiction. *Montesano L. & M. Co.* v. *Portland Iron Works* (Ore.), 152 Pac. 244. For principles involved, see 3 VA. L. REV. 73.

CONSPIRACY — DAMAGES — FRAUDULENT CONVEYANCE. — The defendant fraudulently conspired with a debtor to accept a mortgage on the debtor's personalty and foreclosure the same, in order to hinder and delay a general creditor in the collection of a debt. The creditor brought an action to recover damages. *Held,* the defendant is not liable. *Security State Bank of Enid et al.* v. *Reger* (Okla.), 151 Pac. 1170.

The great majority of cases have reached the same result as the principal case, but the reasons on which the decisions are based are not identical. Some courts hold that, in the absence of fraud, a civil action will not lie for conspiracy. *De Wulf* v. *Dix,* 110 Iowa 553, 81